(1)

Supreme Court, U.S.
FILED

No. _____ 98 895 SEP 14 1998

OFFICE OF THE CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1998

ROSAMA C. IVERY,

Petitioner

v.

DEPARTMENT OF THE NAVY

Respondent

Petition for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

PETITION FOR WRIT OF CERTIORARI

Rosama C. Ivery
3235 Shepherd Dr.
Camarillo, CA 93010
(805) 484-0181

69pp

QUESTIONS PRESENTED

Whether the agency, with total disregard of its OPNAVINST.5510.1H CH1 dated 24 August, 1990, which requires the use of a current medical evaluation to determine the grounds for dismissal of an employee, can use false statements of other employees, who are protected by the Tort Claims Act, in contradiction to evaluations of two licensed and certified psychologists, to dismiss an employee.

PARTIES TO THE PROCEEDINGS BELOW

The parties to the proceedings in the Court of Appeals were as follows:

Rosama C. Ivery
3235 Shepherd Dr.
Camarillo, CA 93010
(805) 484-0181

Department of the Navy
Ming-Yuen Meyer-Fong
Department of Justice
Commercial Litigation Branch
1100 "L" St. NW
Room 12000
Washington DC 20530

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TABLE OF AUTHORITIES

CASES

1. No previous cases apply. This case is unique, I have not been accused of any wrong doing.

2. I am psychologically healthy, clear thinking, and not a risk for top secret clearance, as reported in two current medical evaluations, by two licensed and certified psychologists.

CONSTITUTIONAL PROVISIONS AND STATUTES

OPNAVINST.5510.1H CH1 Pg. 22A-11 dated 24 August 1990

IN THE
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OCTOBER TERM, 1998

No. _____

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Petition for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

---

PETITION FOR WRIT OF CERTIORARI

Petitioner Rosama C. Ivery respectfully pray that a writ of certiorari issue to review judgment of the United States Court of Appeals for the Federal Circuit, 98-3205 dated August 19, 1998.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Federal Circuit, 98-3205, dated August 19, 1998 is designated for publication but is not yet reported, and is reproduced in Appendix A to this petition. The orders and opinions of the United States Circuit of Appeals, for the 5th

Circuit, SF-0752-97-0429-I-1, are unreported and are reproduced in Appendices A through E. A rebuttal letter to Clerk of the Board Merit Systems Protection Board is reproduced and appears in Appendix F. OPNAVINST.5510.1H CH1 reproduced and appears in Appendix G. Two current medical reports from two licensed and certified psychologists are reproduced and appear in Appendix H.

JURISDICTION

The judgment of the United States Court of Appeals for the Federal Circuit was entered on August 19, 1998, pursuant to Rule 36.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

OPNAVINST.5510.1H CH1 dated 24 August 1990, Pg. 22-A-11, states the disqualifying factors, i.e.: behavior or condition of mental disorder falls within one or more of (5) categories (then the instruction listed the five categories and each had one of the following comments in them):

1. "Diagnosis by competent medical authority..."

2. "...the opinion of competent medical authority..."

3. " A Diagnosis by a competent medical authority that..."

4. "Diagnosis by medical authority that..."

5. "...or otherwise failing to follow medical advice relating to treatment..."

STATEMENT OF THE CASE

While employed as Resources Assistant with the Threat Analysis Division, Naval Air Warfare Center Weapons Division, Point Mugu, California at grade GS-07, step 5, I was placed on Administrative Leave on 23 August 1995, because of "false statements" made by my supervisor and co-workers. I was eventually, wrongfully terminated from my employment with the government on 7 April 1997.

The Department of the Navy Central Adjudication Facility (DONCAF), requested a current medical evaluation of me, to be sent to them no later than 28 February 1996, via Commander, Code 74100D, Naval Air Warfare Center, Point Mugu, California. They (DONCAF) refuse to receive anything from me direct. (See Attach. 2, para. 2.)

I had two medical evaluations, by Dr. Jo Ellen Stevens, who was recommended to me by Civilian Employee Assistance Program (CEAP), Naval Air Warfare Center, Point Mugu, California and Dr. Leonard Diamond, two licensed and certified psychologists. (See Attach. 2, pg. 12 of Reasons For Granting the Petition and Appendix H.)

I completed my medical evaluations from Dr. Jo Ellen Stevens and Dr. Leonard Diamond. Mr. William Jenkins of Code 74100D was in receipt of them on 22 February 1996, in order to meet DONCAF's deadline of 28 February 1996. (See Attach. 1 of Reasons For Granting The Petition.) I learned from Mr. Jenkins on 14 April 1996, a month and a half later, that my medical evaluations had <u>not</u> been sent to DONCAF! He claimed to have lost them, but conveniently found them after the deadline set by DONCAF had passed.

With the knowledge of my past medical history, the Navy had no intentions of sending the current medical evaluations as required by procedures under OPNAVINST.5510.1H CH1 dated 24 August 1990.

So the decision to remove me from my employment with the government was based on command security

records, medical files, and Defense Investigative Service (DIS) investigation completed 21 November 1994, for the issuance of my top secret clearance. (See Appendix C, Page 2c, Analysis and Findings.)

The decision to remove me from my employment with the government was based on the same information used to grant my top secret clearance.

So you see, the procedures and intentions used to grant my top secret clearance are questionable.

My top secret clearance was granted with the knowledge of my past medical history, the same medical history cited by DONCAF for revoking my top secret clearance. It is evident that if my medical history was disqualifying for maintenance of a top secret clearance, so it is disqualifying for issuance of a top secret clearance. (See Appendix C, Pg. 2c, Analysis and Findings, Appendix H, Pg. 2h para. 6 and Pgs. 3h & 4h.)

These facts should illustrate to any reasonable person, that the agency issued the top secret clearance with the intent to use it to remove me from my employment with the government.

My current medical evaluations were deliberately withheld from DONCAF, to deny me the procedures under OPNAVINST.5510.1H CH1 dated 24 August 1990, in order to revoke my clearance and terminate my employment with the government. (See Appendix E, Pg. 1e #2, Appendix F, pgs. 1f & 2f para. 1, Appendix G, Disqualifying Factors, Appendix H, Pg. 4h, para. 2.)

The agency knew that they could not terminate my employment with the current medical evaluations, which had been done by two licensed and certified psychologists: Dr. Jo Ellen Stevens, who had been recommended to me by Civilian Employment Assistance Program (CEAP), Naval Air Warfare Center, Point Mugu, California, and Dr. Leonard Diamond, a clinical psychologist, who is eminently qualified to give and evaluate MMPIs and has done so for the past 25 years. Dr. Diamond is considered an expert in this field and his testimony has been accepted

without hesitation in our local courts. A copy of Dr. Diamond's report and MMPI profile appears in Appendix H.

I was very proud when I received my top secret clearance. I view myself as a patriotic person. I love my country. I served in the military, and while I knew generally what intelligence was about, I never sought out that type of work.

During downsizing, I lost my previous position, unfairly, I might add, and the position in the intelligence office was the only job offered to me, so I accepted it. (See Appendix D, Pgs. 1d para. 3, pg. 2d para. 1.) The job I had been doing in my previous position required a secret clearance, which I had already held for 12 years.

Mr. Paul Christensen, who interviewed me for the position, said I would need a top secret clearance if I wanted to work in "Special Projects" in the future. My life history was investigated, including my past medical history, and I was issued a top secret clearance 18 May 1995. However, after obtaining the top secret clearance, I was told that I would never be working in "Special Projects" after all.

On 23 August 1995, just three months after receiving my top secret clearance, my security clearance was suspended indefinitely. I was sent home, not realizing that I would never be returning to work. (See Attach. 3 of Reasons for Granting The Petition and Appendix F, pg. 2f, Appendix E #4.) I was later terminated using the same information used to issue my top secret clearance.

My performance has always been Highly Satisfactory to Outstanding. I am an excellent worker and get along well with others. (See Attach. 4, pgs. 19-29 to Reasons For Granting The Petition.)

In order to bring into question anything about my behavior, it was necessary for me to have a top secret clearance. It is possible to bring into question the behavior of anyone who holds a top

secret clearance. Once your behavior is questioned by anyone, the agency can then request a current medical evaluation. (See Attach. 2 of Reasons For Granting The Petition.) By agency regulations, security clearance is not a right of the individual. The agency issues and revokes clearances at their discretion.

In every decision given, the evaluators have stated that, upon notice of intentions to revoke my clearance, I did not reply. Not replying to their intent was only my recognition of the fact that they, (the agency) have the right to withdraw a clearance at any time for any reason. I did not believe that they intended to revoke my clearance in order to remove me from my job! This only became evident to me, when they claimed to have lost my current medical evaluations and conveniently found them, after the deadline set by DONCAF had passed. This violates my rights to procedures under OPNAVINST.5510.1H CH1 dated 24 August 1990. (See Appendix C, Pg. 3c, para 1, and Appendix G, Disqualifying Factors.)

DONCAF required a current medical evaluation of me by a "competent medical authority." I complied with DONCAF's request. Nothing else was required of me.

REASONS FOR GRANTING THE PETITION

This petition should be granted because I was denied the rights under the procedures of OPNAVINST.5510.1H CH1 dated 24 August 1990. (Appendix G.)

The agency failed to submit my current medical evaluations to Department of the Navy Adjudication Facility (DONCAF), in order for DONCAF to make a judgment on my top secret clearance. This violates procedures under OPNAVINST.5510.1H CH1 dated 24 August 1990.

DONCAF requested a current medical evaluation of me. I completed the evaluations from two licensed

and certified psychologists. I submitted them to the agency on 22 February 1996, in order to meet DONCAF's due date of 28 February 1996. The agency claimed to have lost my medical evaluations, but conveniently found them, after the deadline set by DONCAF had passed!

I was evaluated by Dr. Jo Ellen Stevens, who was recommended to me by Civilian Employee Assistance Program (CEAP), Naval Air Warfare Center, Point Mugu, California, (See Attach. 1 & 2), and by Dr. Leonard Diamond, a clinical psychologist who is eminently qualified to give and evaluate MMPIs, and has done so for the past 25 years. Dr. Diamond is considered to be an expert in this field and his testimony has been accepted without hesitation in our local courts. A copy of Dr. Stevens and Dr. Diamond's reports and MMPI profile appears in Appendix H.

The medical evaluators state that I am psychologically healthy, clear thinking and not a risk for top secret clearance.

My performance has always been Highly Satisfactory to Outstanding. I am an excellent worker and get along well with others. (See Attach. 4 pgs. 19-29.)

In order to bring into question anything about my behavior, it was necessary for me to have a top secret clearance. During downsizing, I lost my previous position, unfairly I might add, and the only position offered me was in the intelligence office, so I accepted it. (See Appendix D, Pg. 1d, para. 3, Pg. 2d para. 1.)

Mr. Paul Christensen, who interviewed me for the position, told me if I wanted to work in "Special Projects," I would need a top secret clearance. My life was investigated, including my past medical history, and I was issued a top secret clearance on 18 May 1995.

On 23 August 1995, just three months after receiving my top secret clearance, my access was suspended indefinitely, and I was sent home, not

realizing that I would never be returning to work. (See Attach. 3 & 5, and Appendix F, Pg. 2f.)

This petition should be granted because my supervisor and co-workers made "false statements" about me, which made it a necessary condition that I be evaluated in order to keep my top secret clearance and my employment with the government. These "false statements" and the fact that the agency failed to submit my current medical evaluations to DONCAF, caused me to lose my job. I was fired for not maintaining my security clearance.

This petition should be granted because it is important to have some type of law governing the misuse of issuing a top secret clearance for the purpose of revocation of security clearances. There is no checks and balances system whereby violators of civil laws, in executing government policies and rules, can be held accountable.

It is outrageous and unconscionable to have a group of employees make false statements and accusations causing me, or anyone to be fired. Their "false statements" prompted the Navy (Defense Department) to revoke my clearance.

I believe that attention should be given to the "false statements" which caused the condition of my clearance to be revoked, and something should be done about it.

Once my clearance was revoked, all focus was on the revocation of my clearance, no matter how hard I worked to present my case in a manner that any reasonable person could see what had happened to me in that intelligence office. All evaluators of my case came back with the same results: We cannot second guess the Navy (Defense Department) on the revocation of a clearance.

I felt that they should have focused on the employees who made the "false statements".

Suppose there were six other people in your office and they made false statements about you, causing you to lose your license to practice law.

Would you base your case on the false statements made by the members in your office, or would you base it on the people who revoked your license?

My supervisor and co-workers made "false statements" about me, causing me to get fired. They are the people who are responsible for my being denied the right to work and earn a living. These people should be held accountable for their actions, for if they are not held accountable, I fear that this situation will happen again to some other unsuspecting victim, like myself.

ATTACHMENT 1

From: Rosama C. Ivery, SSN: 439-58-2455

To: Director, Department of the Navy Central Adjudication Facility

Via: Commander, Code 741200E, Code (P6613), NAWCWPNSDIV 521 9th Street, Point Mugu, CA 93042-5001

Subj: CURRENT MEDICAL EVALUATION

Ref: (a) Your ltr 5520 Ser 008BH591 of 31 Oct 1995

Encl: (1) Psychological Evaluation of Rosama C. Ivery

1. Enclosure (1) is forwarded to you in accordance with reference (a)

Sincerely,

/S/ Rosama C. Ivery

Rosama C. Ivery

TRANSMISSION REPORT

THIS DOCUMENT WAS CONFIRMED
(REDUCED SAMPLE ABOVE - SEE DETAILS BELOW)
TOTAL PAGES SCANNED : 7
TOTAL PAGES CONFIRMED : 7

No.	REMOTE STATION	START TIME	DURATION	RESULTS
1	805-989-4853	2-22-96 1:20PM	3'23"	COMPLETED 9600

/S/ Rosama C. Ivery
(Attachment 1)

ATTACHMENT 2

Department of the Navy
Central Adjudication Facility
Washington Navy Yard
901 M Street SE
Washington DC 20300

In reply refer to:
5520
Ser 017BH743
06 FEB 1996

From: Director, Department of the Navy Central Adjudication Facility
To: Commander, Code 741200E (P6613), NAWCWPNSDIV, 521 9th Street, Point Mugu, CA 93042-5001 (UIC: 63126)

Subj: MS. ROSAMA C. IVERY, SSN: 439-58-2455

Ref: (a) Our ltr 5520 Ser 008BH591 of 31 Oct 95

Encl: (1) Subject's ltr Cert # Z067196582 of 8 Jan 96
(2) Subject's ltr of 24 Jan 96

1. Reference (a) requested a current medical evaluation on subject and provided specific instructions in the submission of that information.

2. Enclosures (1) and (2) are being returned to be submitted in accordance with the instruction provided (Command Endorsement). Subject has been granted an extension until 28 February 1996 to meet the terms of reference (a). Also advise subject we acknowledge receipt of her letters, but all future correspondence must be forwarded to us via the security manager.

3. For CO NAWCWPNSDIV, Point Mugu, CA. Enclosures (1) and (2) are forwarded for your endorsement. If you have any questions concerning

this matter contact the undersigned on DSN 288-8940 or commercial (202) 433-8940.

/S/ A. Hammock

A. HAMMOCK
By direction

I agree to the evaluation. Please notify me of the date, time and location of the evaluation*

/S/ Rosama C. Ivery 2/7/96

*Request CEAP Referral.

TRANSMISSION REPORT

THIS DOCUMENT WAS CONFIRMED
(REDUCED SAMPLE ABOVE - SEE DETAILS BELOW)
TOTAL PAGES SCANNED : 1
TOTAL PAGES CONFIRMED : 1

No.	REMOTE STATION	START TIME	DURATION	RESULTS
1	805-989-4853	2-8-96 11:56AM	0'47"	COMPLETED 9600

/S/ Rosama C. Ivery
(Attachment 2)

ATTACHMENT 3

1 September 1995

From: Rosama C. Ivery, Code 4J4000E
To: Captain Roger K. Hull, Vice Commander, NAWCWD
Via: Associate Head, Security Division, Code 741A00E (P66101)

Subj: ADMINISTRATION SUSPENSION OF SECURITY ACCESS; CASE OF

Ref: (a) OPNAVINST 5510.1H CH-1 (Mental or Emotional Disorders)
(b) Mr. Jenkin's ltr 5520 741A00E (P66101) of 9 Aug 95 Addressed to Ms Ivery
(c) Ms Ivery's ltr to Mr. Jenkins (Code 741A00E) (P66101)

1. The basis for the action by Code P66101, to suspend my security access, is alleged to have been based on reference (a). The employees Code 4J4000E made the judgement call to make statements about their alleged "fears and behavior" concerning me; (reference c's response).

2. Reference (a) states the disqualifying factors, i.e.: behavior or condition of mental disorder falls within one or more of the (5) categories (then the instruction listed the five categories and each had one of the following comment in them):

1. Diagnosis by competent medical authority--"
2. "--the opinion of competent medical authority--"
3. "A diagnosis by competent medical authority that--"
4. "Diagnosis by competent medical

authority that--"

5. "--or otherwise failing to follow medical advise relating to treatment--"

The coworkers should have acted within the rules of our employment; but instead of that or whatever their reasons are; it appears that the immediate reactions in Code 4J4000E as to what they perceived as "fear" of the undersigned, were statements provided, with ambiguous wording. These statements gave Mr. Jenkins the power to issue reference (b), without competent medical authority. The statements and Mr. Jenkins actions circumvented reference (a) and I believe it's a historic mistake.

3. In their high-stakes decisions, the critical issue is the extent to which outcomes occur as a result of false beliefs, or whether the employees truly believe they can control, through the application of "fear" statements, my employment with the federal government.

4. The overwhelming evidence, in the prcvided information, reference (c) suggests that the code employees exhibit a kind of "creeping determinism; that is, they are attempting to find logical explanations for events that are, in fact, controlled by chance. Chance? However, to study the "fear" phenomena of the code's employees, one could look toward China Lake or EEO case DON-93-631626-011 symbolisms. The problem of the employees creeping determinism also relates to the age-old debate about the ends versus means. The employees assumed that their statements were necessary, even though they may be unethical, to achieve a certain goal which they perceive to be moral. In other words their end justifies the means. The assumption can be dangerously wrong under the law of the land. Employees of the

federal government, who make moral compromises in order to achieve ends find that their compromises irrevocably alter the end achieved thus, in a world of process, it is method rather than goal which carries the burden of moral value.

5. The evaluators, Captain Hull and you, Mr. Jenkins, must carefully attend to the process by which the decisions to make the statements were made--the means as well as the end. Only by analyzing how the decision was made, what factors were considered, what planning took place, what information was available at the time, would the evaluators assess whether the decision to administratively suspend my security access was correct. I believe it was not.

6. Permit me the time to talk about "Free Willy". If it was not so narrow minded by the code employees, it would be funny, but it's not because it makes my response a necessary condition. Anyway -- "Free Willy" is a movie about a killer whale (endangered species) who is captured by commercial fisherman and brought to an amusement park, where he is to be trained to perform for audiences at the park. But the trainers were unable to get cooperation from Willy and were unable to train him. Then came Jesse, a homeless boy, who is apprehended by the police for stealing and defacing the observatory area of the tank, where the sea lions perform, and is made to clean-up the graffiti.

7. While doing his clean-up, Jesse sees Willy and a friendship develops. The boy is able to train Willy, but when the time comes for Willy to perform for the audience, Willy did not perform. Then one of the trainers trying to soothe the disappointed boy, tells the history of whales and how they spend their whole lives with their family. Jesse begins to understand why Willy had let him down.

8. Jesse related with the whale having been abandoned by this mother, sets out to "Free Willy" from his captures, who were preparing to kill Willy because they had lost money by not being able to train him for performances, so that they could collect a million dollars on his insurance. Jesse gets help from the trainers at the amusement park and from his foster parents, who were also sympathetic to Willy, and together they "Free Willy".

9. To explain why I was writing "Free Willy" is as simple as this. I was watching T.V. the night before and had seen the advertisement for "Free Willy 2" and I was idly thinking about the movie wondering what the sequel would be like. I thought maybe like Willy, the boy would be reunited with his mother in "Free Willy 2" and I was scribbling as I was thinking, relaxing from the library work. Another point of reference is that you may have seen in the O.J. Simpson trial that there was a comic strip in Judge Ito's court about "Free Willy and "Johnny Cochran." The judge's comments were "I thought it funny and complimentary."

10. The only other explanation I can give under the circumstances surrounding the analysis of the "fear" issue, is that "something is wrong" with their statements. The employees should have been cautious "witnesses", that shied away from speculation. For them to conjure up "fear" scenarios to explain their behavior is what I see as a continuation of the historical tradition toward African-American Women, in general, and the impact of racial and maybe class oppression, in particular.

11. As to the code employees use of such statements as "fear", "behavior", items I posted" and shredding the material" it should be noted that in the state of California, I have been informed that

presumptions and/or inference statements, like the ones made by the code employees are presumptions; which are assumptions of an alleged set of facts, from another fact or group of facts found, which otherwise were established falsely in their actions, but no real facts have been established. Presumptions are not evidence anyway. Right?

12. The code employees have the burden of producing evidence as to the alleged so called mental or emotional disorder. They do not have the training to do so. The code employees are not competent medical authorities. It appears that they violated my rights as a person under the Laws of the United States. How dare they do that!

13. Irrespective of me taking a few moments to sit at my desk during the day, (I work in the Library) it's important to recall that all code employees work at separate locations and are not with other code employees. Each location is not in the constant view of the other code employee. So how can someone talk about my daily behavior.

14. The rebuttable presumptions of "fear," items posted on walls," and "shredding the material," are in fact, rebuttable issues by me. The classifications of the code employees presumptions as based on the above criteria is a play on fear and no single theory or rationale can deal adequately with all the statements in their criteria, but one. Hence, I will be the first to inform you that there are no problems of mental or emotional disorders as a recognized distinction within me.

15. I have worked hard, as a government employee, with a security access. And yes, in the past two or so months, (because of actions by the Command in my EEO case) I have had moments of frustration concerning the pace of the EEO case. At that time,

I expressed my feelings about my case by writing Justice Delayed is Justice Denied. My behavior/reaction, then was based on the movie and the frustration of the pace, (short time reacting in May 95), nothing more. But now we have slanderous statements that benefits no one. I am requesting that my security assess be restored.

Sincerely,

/S/ Rosama C. Ivery

Rosama C. Ivery

/S/ Rosama C. Ivery
(Attachment 3)

ATTACHMENT 4

SPECIAL ACHIEVEMENT

AWARD TO

ROSAMA C. IVERY

PACIFIC MISSILE TEST CENTER

THE PACIFIC MISSILE TEST CENTER EARNESTLY THANKS AND CONGRATULATES YOU. YOUR CONTRIBUTION IS SINCERELY APPRECIATED.

DATE: 8 MAY 1988

/S/

D. A. LEFAVOUR, CAPT, USN
Director
Weapons Support Directorate

SPECIAL ACHIEVEMENT

AWARD TO

ROSAMA C. IVERY

PERFORMANCE AWARD

PACIFIC MISSILE TEST CENTER

THE PACIFIC MISSILE TEST CENTER EARNESTLY THANKS AND CONGRATULATES YOU. YOUR CONTRIBUTION IS SINCERELY APPRECIATED.

DATE: 31 MARCH 1989

/S/

D. A. LEFAVOUR, CAPT, USN
DIRECTOR,
WEAPONS SUPPORT DIRECTORATE

SPECIAL ACHIEVEMENT

AWARD TO

PERFORMANCE AWARD

ROSAMA C. IVERY

PACIFIC MISSILE TEST CENTER

THE PACIFIC MISSILE TEST CENTER EARNESTLY THANKS AND CONGRATULATES YOU. YOUR CONTRIBUTION IS SINCERELY APPRECIATED.

DATE: 9 MAY 1990

/S/

D. A. LEFAVOUR, CAPT, USN
DIRECTOR,
WEAPONS SUPPORT DIRECTORATE

OUTSTANDING PERFORMANCE

CERTIFICATE OF COMMENDATION

AWARDED TO

ROSAMA C. IVERY

IN RECOGNITION OF OUTSTANDING PERFORMANCE OF DUTIES AND RESPONSIBILITIES DURING THE RATING PERIOD ENDING

31 MARCH 1991

NAWC
Weapons Division
NAVAL AIR WARFARE CENTER

LYLE K. HOCHBERGER
Head, In-Service Engineering Department
Weapons Directorate

NAVAL AIR WARFARE CENTER
WEAPONS DIVISION
POINT MUGU, CALIFORNIA

OUTSTANDING PERFORMANCE

CERTIFICATE OF COMMENDATION

AWARDED TO

ROSAMA C. IVERY

IN RECOGNITION OF OUTSTANDING PERFORMANCE OF DUTIES AND RESPONSIBILITIES DURING THE RATING PERIOD ENDING

31 MARCH 1992

NAWC
Weapons Division
NAVAL AIR WARFARE CENTER

/S/ Lyle K. Hochberger
LYLE K. HOCHBERGER
Head,
In-Service Engineering Department
Weapons Directorate

NAVAL AIR WARFARE CENTER
WEAPONS DIVISION
POINT MUGU, CALIFORNIA

SPECIAL ACHIEVEMENT

PERFORMANCE

AWARD TO

ROSAMA C. IVERY

NAWC
Weapons Division
NAVAL AIR WARFARE CENTER

THE NAVAL AIR WARFARE CENTER WEAPONS DIVISION EARNESTLY THANKS AND CONGRATULATES YOU. YOUR CONTRIBUTION IS SINCERELY APPRECIATED.

DATE: 30 APRIL 1993

/S/
LYLE K. HOCHBERGER
Head, In-Service Engineering Department
Weapons Directorate

PERFORMANCE APPRAISAL REVIEW SYSTEM
RATING SHEET
Final Rating of Record

FROM: 1 April 1990 TO 31 March 1991

Ivery, Rosama C. 439-58-2455
Resources Assistant, GS-303-07 WSD/Code 2050

CERTIFICATION OF ACCURACY AT BEGINNING OF APPRAISAL CYCLE.

CERTIFICATION THAT THE POSITION DESCRIPTION IS ACCURATE

DATE PERFORMANCE PLAN ESTABLISHED 4/20/90

RECORD OF REVIEWS AND FINAL RATINGS
(Signature indicates that this step of the process is understood and has been completed.)

	Establish/ Recertify Performance Plan	Progress Review/Mid-Term Review	Rating of Record Close-out Rating
First Level Supervisor	/S/ 4/20/90	/S/ 8/15/91	/S/5/29/91
Second Level Supervisor	/S/ 4/24/90	/S/ 8/15/91	/S/5/29/91
Employee	/S/ 4/20/90	/S/ 8/15/91	/S/5/29/91

RATING

Outstanding, Level 5: Above fully successful on all critical elements and made significant

contributions to the organizations mission.

ELEMENTS

(1) Correspondence/mail, (2) Keeps Division Head's calendar and schedules appointments, (3) Receives all visitors and telephone calls, (4) Reports/Documentation Forms -

ALL OF ABOVE FULLY SUCCESSFUL (AFS)

Outstanding rating. Narrative of significant contributions to the organization: Ms Ivery has and will continue to make a substantial contribution to the continued operation and growth of this organization. With the impending move of the Division's Administrative Officer, Ms. Ivery assumed those responsibilities in addition to her currently heavy workload. She became an authority in personnel matters and their associated administration. Since the departure of the Division Admin. Officer she has demonstrated accuracy, thoroughness and orderliness in the performance of these duties. She has been diligent, extremely resourceful and enthusiastic in her work, which is well beyond the requirements of her present position description.

/S/

PERFORMANCE APPRAISAL REVIEW SYSTEM
RATING SHEET
Final Rating of Record

FROM: 1 April 1991 TO: 31 March 1992
Ivery, Rosama C. 439-58-2455
Resources Assistant, GS-303-07 WSD/Code 2050

CERTIFICATION OF ACCURACY AT BEGINNING OF APPRAISAL CYCLE - CERTIFICATION THAT THE

POSITION DESCRIPTION IS ACCURATE - DATE PERFORMANCE PLAN ESTABLISHED.

RECORD OF REVIEWS AND FINAL RATINGS (Signature indicates that this step of the process is understood and has been completed.)

	Establish/ Recertify Performance Plan	Progress Review/Mid-Term Review	Rating of Record Close-out Rating
First Level Supervisor	/S/ 4/3/91	/S/11/2/91	/S/4/28/92
Second Level Supervisor	/S/ 4/3/91		/S/4/29/92
Employee	/S/ 4/3/91	/S/ 11/2/91	

RATING

Outstanding - Level 5: Above fully successful on all critical elements and made significant contributions to the organization's mission.

ELEMENTS

(1) Correspondence/mail, (2) Keeps Division Head's calendar and schedules appointments/meetings, (3) Receives all visitors and telephone calls, (4) Reports/documents/forms, (5) Other assignments.

ALL ELEMENTS: Above fully successful (AFS).

Outstanding Rating Narrative of significant contributions to the organization: Ms. Ivery

has affectively demonstrated an ability to effectively handle many special assignments, which are not part and parcel of her normal duties and responsibilities. Her cooperation in support of the Directorate Christmas Party is one such example. She successfully copes with the pressure extremes placed on her by Supervisors, co-workers and peers and has excelled in sustaining her dedication and concentration, while avoiding confrontations. She has performed all assignments with peak efficiency and correctness and has made substantial contributions to the continued operation of this organization.

/S/ 4/29/98

NOTIFICATION OF PERSONNEL ACTION

Ivery, Rosama C. 439-58-2455 1/21/42
Performance Award $500.00
Effective Date: 05/02/88 Secretary (Typing)
P725411001

Weapons Support Directorate
Support Equipment Division
Support Equipment Acquisition Branch
PACMISTESTCEN, Point Mugu, California
/S/

NOTIFICATION OF PERSONNEL ACTION

Ivery, Rosama C. 439-58-2455 1/21/42
Performance Award $500.00
Effective Date: 5/89 Resources Assistant

Weapons Support Directorate
Support Equipment Division
PACMISTESTCEN, Point Mugu, California
/S/

NOTIFICATION OF PERSONNEL ACTION

Ivery, Rosama C. 439-58-2455 1/21/42
Performance Award $500.00
Effective Date: 05/09/90

Weapons Support Directorate
Support Equipment Division
PACMISTESTCEN, Point Mugu, California
/S/

NOTIFICATION OF PERSONNEL ACTION

Ivery, Rosama C. 439-58-2455 1/21/42
Performance Award $515.00
Effective Date: 04/30/93 Resources Assistant

Weapons Directorate
In-Service Engineering Department
Support Equipment Division
NAVAIRWAR CENWPNDIV, Point Mugu, California
/S/

NOTIFICATION OF PERSONNEL ACTION

Ivery, Rosama C. 439-58-2455 1/21/42
Performance Award $400.00
Effective Date: 05/28/95

Engineering
Head, Concepts Analysis, Eval. & Plng.
Head, Threat Analysis and Support Div.
4J8000E
NAWCWPNSDIV, Point Mugu, California 93042
/S/

/S/ Rosama C. Ivery
(Attachment 4)

ATTACHMENT 5

U N C L A S S I F I E D

ADMINISTRATIVE MESSAGE

ROUTINE

R 150930Z MAY 95 ZYB PSN 555248Q29

FM DON CAF WASHINGTON DC

TO NAVAIRWARCENWPNDIV PT MUGU CA//SECMGR//

UNCLAS FOUO //N05520//

MSGID/GENADMIN/DONCAF//

SUBJ/ADJUDICATIVE MATTER ICO IVERY ROSAMA CECILY, 439-58-2455/ CIVILIAN EMPLOYEE//

RMKS/1. SUBJ AUTH FINAL TOP SECRET CLEARANCE EFFECTIVE 950515 BASED ON DEFENSE INVESTIGATIVE SERVICE SINGLE SCOPE BACKGROUND INVESTIGATION COMPLETED 941121.

2. THIS MSG IS FINAL REC OF CLNC AND MUST BE MAINTAINED IN THE SUBJ'S SERVICE RECORD OR LOCAL SECURITY FOLDER. IF SUBJ IS A CIVILIAN, THIS MSG MUST BE MAINTAINED ON THE PERM SIDE OF THE OPF UNTIL SUPERSEDED.

3. PLS INCLUDE SUBJ NAME AND SSN, YOUR UIC, POC, PHONE ON ALL COMMS

TO DON CAF. DON CAF PHONE: DSN 288-8880; COMM 202-433-8880
BT
741100E(1)...ACT FOR NAVAIRWARCENWPNDIV P(3) 15331/17/1401 725200E(1) CDO (1)

*** MDU office codes that have received this message: ***

MDUOPR

555248/137 1 of 1 150930Z MAY 95

DON CAF WASHIN

UNCLASSIFIED

5520
741200E
18 MAY 95

FOR OFFICIAL USE ONLY

MEMORANDUM

From: Head, Personnel Security Branch, Code 741200E
To: IVERY, Rosama C., 745B00E
Via: Christensen, Paul H., 5E0000E

Subj: APPROVAL OF APPOINTMENT TO A CRITICAL SENSITIVE POSITION FOR FINAL TOP SECRET, SSBI/DIS/941121

REF: (A) OPNAVINST 5510.1H

1. The justification for appointment to a Critical Sensitive position contained in reference (a) has been carefully reviewed and is approved by the Department of the Navy Central Adjudication Facility (DONCAF). Therefore, you are granted a final Top Secret clearance.

2. Clearances, either final or interim, do not solely give you the right to have access to classified information. In addition a clearance, your official duties must require access to any element or item of classified information (the-

need-to-know) before you are given access.

3. Your access to classified material may be restricted or suspended for cause, due to suspected violations of federal or state laws, Department of Defense, Department of the Navy, or Naval Weapons Center regulations. The restriction or suspension will remain in effect until your eligibility has been resolved by the Department of the Navy Central Adjudication Facility (DONCAF).

/S/ William Jenkins

FOR OFFICIAL USE ONLY

/S/ Rosama C. Ivery
(Attachment 5)

CONCLUSION

For the foregoing reasons this Court should grant this petition for certiorari and should either remand this case for reconsideration in light of the fact that the petitioner was denied due process as stated in this petition or set the case for briefing and argument.

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

No. 98-3205

Rosama C. Ivery,

Petitioner

v.

Department of the Navy,

Respondent

DECIDED: AUGUST 19, 1998

Before RADER, Circuit Judge, FRIEDMAN, Senior Circuit Judge, and BRYSON, Circuit Judge.

PER CURIAM.

DECISION

The decision of the Merit Systems Protection Board (Board), affirming the Department of the Navy (Navy's) removal of the petitioner Ivery, after her security clearance had been revoked, from her position that required a top secret security clearance (Docket No. SF-0752-97-0429-1-1), is affirmed.

OPINION

I

The Navy employed Ivery in a "critical sensitive" position that required a top secret security clearance. The Navy gave her written notice that it proposed to revoke her security clearance for "emotional, mental and personality disorders" and afforded her the opportunity to reply. She did not respond, and the Navy revoked her security clearance. The Navy informed her of her right to appeal that action and explained to her how to do so, but she did not appeal.

The Navy then proposed to remove her based on her failure to maintain her security clearance. The notice explained the reason for the proposed removal and informed her of her right to reply. In response Ivery stated that she had been evaluated by two psychologists, who concluded that she was "psychologically healthy."

The Navy then removed her for "failure to maintain your eligibility for a security clearance which is a requirement for your position." Ivery appealed her removal to the Board, which after a hearing upheld the action. The Board held that under Department of the Navy v. Egan, 484 U.S. 518 (1988), "the Board is without authority to review the merits of the revocation [of a security clearance] in connection with the appeal of a removal action" and that the Navy had satisfied the procedural requirements for both the revocation of her security clearance and her removal.

II

A. In Egan the Supreme Court held that the Board does not have "authority by statute to

review the substance of an underlying decision to deny or revoke a security clearance in the course of reviewing an adverse action" based upon the lack of such clearance. 484 U.S. at 520. The Court ruled that in reviewing such a removal the Board is limited to "review of the fact of denial, of the position's requirement of security clearance, and of the satisfactory provision of the requisite procedural protections." Id. at 526. This court repeatedly has applied those limitations. See Griffin v. Defense Mapping Agency, 864 F.2d 1579,1581 (Fed. Cir. 1989) ("Once the Board was satisfied that Griffin's removal was for failure to obtain a security clearance and he had been given the procedural protections of section 7513[b], its inquiry was over."); Drumheller v. Department of the Army, 49 F.3d 1566, 1569-70 (Fed. Cir. 1995) (holding that the Board's review of the Army's revocation of a security clearance is limited to the question of whether appropriate procedural protections were provided).

The Board satisfied those requirements in upholding Ivery's removal. The Board determined that the evidentiary record showed that Ivery's position required a security clearance, that that clearance was revoked, that in effecting such revocation the Navy gave her due process, and that in her removal "she was afforded all statutory and regulatory adverse action rights and procedures." Ivery does not challenge any of these determinations. To the extent Ivery is challenging the factual basis for the revocation of her security clearance, the Board correctly refused to consider the argument.

B. Ivery contends, however, that the position from which she was removed did not require a top secret clearance, and that she had held a secret clearance for twelve years. Apparently her argument is that her removal was therefore improper

because the revocation of her top secret clearance did not disqualify her from continuing to occupy her position.

One of the requirements set forth in the job description of the position from which Ivery was removed, however, was that "Incumbent must be able to obtain a Top Secret Clearance." In any event, the determination of the appropriate level of security clearance required for a particular position is for the agency, not the court, to determine. See Egan 484 U.S. at 529 ("[T]he protection of classified information must be committed to the broad discretion of the agency responsible.").

/S/ Rosama C. Ivery
(Appendix A)

APPENDIX B

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

ROSAMA C. IVERY,
Appellant,

DOCKET NUMBER
SF-0752-97-0429-I-1

v.

DEPT. OF THE NAVY,
Agency.

DATE: MAR 09 1998

Sterling Ivery, Jr., Camarillo, California for the appellant.

Donald J. Cortichiato, China Lake, California, for the agency.

BEFORE

Ben L. Erdreich, Chairman
Beth S. Slavet, Vice Chair
Susanne T. Marshall, Member

ORDER

After full consideration, we DENY the appellants petition for review of the initial decision issued on July 25, 1997, because it does not meet the criteria for review set forth at 5 C.F.R § 1201.115. This is the Board's final order in this appeal. The initial decision in this appeal is now final. 5 C.F.R. § 1201.113(b).

FOR THE BOARD:

/S/ Robert E. Taylor
Clerk of the Board

APPENDIX C

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
WESTERN REGIONAL OFFICE

ROSAMA C. IVERY,
Appellant,

v.

DEPT. OF THE NAVY,
Agency.

DOCKET NUMBER
SF-0752-97-0429-I-1

DATE: July 25, 1997

Steven E. Brown, Esquire, Westlake Village, California, for the appellant.

Donald J. Cortichiato, China Lake, California, for the agency.

BEFORE

Gretchen W. Thomas
Administrative Judge

INITIAL DECISION

INTRODUCTION

The appellant timely appealed her removal from the position of Resources Assistant, GS-7, Threat Analysis Division, Concept Analysis, Evaluation and Planning Department, Engineering Competency, Naval Air Warfare Center Weapons Division, Point Mugu, California, effective April 7, 1997. The

Board has jurisdiction over the appeal. 5 U.S.C. §§ 7511-7513 and 7701(a).

For the reasons set forth below, the agency's action is AFFIRMED.

ANALYSIS AND FINDINGS

The appellant was removed on a charge of failure to maintain eligibility for a security clearance, a requirement of her position. The specifications underlying the charge allege that as a condition of employment in the position of Resources Assistant, the appellant is required to maintain a Top Secret security clearance. On August 13, 1996, the appellant was notified that the agency intended to revoke her security clearance based on information obtained by the Department of Navy Central Adjudication Facility (DONCAF) from the agency's personnel security records, the appellant's medical files, and a Defense Investigative Service (DIS) investigation in 1994.[1] The notice informed the appellant that the information was disqualifying under the criteria for a security clearance and eligibility for assignment to a sensitive position and access to sensitive

---

[1]Based on concerns regarding her security clearance eligibility, the appellant's access to classified material was indefinitely suspended in September 1995. In October 1995, the agency requested that the appellant undergo a medical evaluation to obtain information relative to her eligibility to hold a security clearance. The appellant provided a psychological evaluation from Dr. JoEllen Stevens, a private practitioner of her choice. Effective November 24, 1995, the appellant was indefinitely suspended without pay, pending the outcome of a DONCAF investigation.

compartmented information. The appellant did not respond to the agency's notice. Based on the available information, the agency determined to revoke the appellant's clearance on November 5, 1996.

In *Department of the Navy v. Egan*, 484 U.S. 518, 530-31 (1988), the United States Supreme Court held that the denial or revocation of a security clearance is a matter within the expertise of the intelligence community and that the Board is without authority to review the merits of the revocation in connection with the appeal of a removal action. Thus, the agency need only establish by a preponderance of the evidence that the appellant's position required a clearance, that the clearance was revoked and that transfer to a non-sensitive position was not required.[2] The agency must also demonstrate that it afforded the appellant minimum due process. Those minimum due process rights include: 1) Notice of and the reasons for the agency's security clearance determination, together with an opportunity to respond, and 2) compliance with the procedural protections of 5 U.S.C. § 7513. *Mitchell v. Department of the Navy*, 43 M.S.P.R. 691, 695 (1990) and *Weissberger v. United States Information Agency*, 39 M.S.P.R. 370, 373 (1988).

Based on a careful review of the

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[2]Following the Supreme Court's decision in *Egan*, the United States Court of Appeals for the Federal Circuit held that the Board's role in reviewing the feasibility of a transfer is limited to where "that substantive right is available from some other source, such as a statute or agency regulation." *Griffin v. Defense Mapping Agency*, 864 F.2d 1579, 1580 (Fed. Cir. 1989)

evidentiary record, I find that the agency has met its burden of proof in all respects. The record shows, and the appellant admitted at the Board hearing, that her position required a security clearance.[3] *See* Appeal File, Tab 4(400 and 4qq) and Hearing Tapes (HT), Testimony of Kenneth Stephens and Opening Remarks, Administrative Judge Gretchen Thomas. Also, there is no dispute that the appellant's security clearance was revoked and that the agency accorded her minimum due process in revoking her clearance. Specifically, the agency notified the appellant of its security clearance determination, including a summary of the disqualifying information which it considered and afforded the appellant the opportunity to respond. *See* Appeal File, Tabs 4(4j) and 11. Further, the appellant acknowledged that she was afforded all statutory and regulatory adverse action rights and procedures under Chapter 75 of title 5 of the United States Code and the Code of Federal Regulations. *See* Tab 11.

The appellant declined to stipulate that the agency has no policy requiring reassignment of an employee whose security clearance has been revoked. However, the appellant presented no evidence to show that such a policy exists. Further, the evidentiary record shows that in July 1991, Roberta Peters, Director of the Office of Civilian Personnel Management, Department of the Navy, declared that it is the official policy of the agency that reassignment

---

[3]Although the appellant argued that her position did not require the top security clearance indicated in the position description, she conceded that it did require a security clearance.

following loss of clearance is neither mandatory nor desirable and that the agency had no plans to issue regulations requiring its activities to consider reassignment. *See* Appeal File, Tab 4(4rr). In addition, the proposing official, Senior Intelligence Officer Kenneth Stephens, and the deciding official, Executive Assistant for Strategic Planning Linda Andrews, testified that to the best of their knowledge, there have been no changes in the agency's policy since 1991. There being no evidence of a policy of reassigning employees whose security clearances are revoked, I find that the agency's decision not to consider reassignment was solely within its discretion. As such, review by the Board is impermissible. *See Skees v. Department of the Navy*, 864 F.2d 1576, 1578 (Fed. Cir. 1989)

The appellant alleges that her security clearance was revoked because of the agency's erroneous perception that she suffered from a mental disability. Recognizing that the Board has previously held that it is precluded from reviewing allegations of discrimination in a security clearance-related appeal, the appellant, nevertheless, argues that the Board should consider her defense.

In oral argument, counsel for the appellant essentially argued that the Board should consider the appellant's defense because the military's decision constituted patent discrimination and the Board should carve out an exception to protect long-time employees and prevent the military from having carte blanche authority to subvert the Rehabilitation Act and discriminate on the

basis of unproven disabilities. However compelling counsel's equitable argument, there is simply no basis for considering the appellant's allegations of discrimination. The Board has consistently held that it may not review or rule on allegations of any type of discrimination that are inextricably intertwined with the denial of a security clearance. Here, the appellant's allegations are directly related to the agency's reasons for deciding to revoke her clearance. Thus, any Board inquiry would necessarily focus on the validity of the agency's reasons, an activity which the Supreme Court in *Egan* precisely proscribed as outside the Board's authority. *See Hinton v. Department of the Navy*, 61 M.S.P.R. 692 (1994); *Mitchell v. Department of the Navy*, 43 M.S.P.R. 691 (1990); *Pangarova v. Department of the Army*, 42 M.S.P.R. 319 (1989).

The appellant also alleged that the Intelligence Office made false statements about her mental health as a "set-up" to retaliate against her for filing an EEO complaint of sexual harassment against her former supervisor, Sammy Drake, in 1993. Because the appellant's allegations go directly to the validity of the agency's reasons for revoking her security clearance, for the same reasons discussed above, the Board is precluded from considering her reprisal claim.

In sum, I find that the agency has established its charge by a preponderance of the evidence. I also find that the Board is without authority to consider the appellant's allegations of prohibited discrimination and reprisal.

DECISION

Accordingly, the agency's action is AFFIRMED.

FOR THE BOARD: /S/
for Gretchen W. Thomas
Administrative Judge

/S/ Rosama C. Ivery
(Appendix C)

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

ROSAMA C. IVERY v. DEPT. OF THE NAVY

No. 98-3205

Informal Brief of Petitioner

Read the Guide for Pro Se Petitioners and Appellants before completing this form. Attach a copy of the initial decision of the administrative judge and the decision, if any, of the Merit Systems Protection Board (MSPB), or a copy of the Arbitrator's decision. Answer the following questions as best you can. Your answers should refer to the MSPB decisions or the Arbitrator's decision where possible. Use extra sheets if needed.

1. Has the petitioner ever had another case in this court? __Yes __No In a United States District Court? __Yes __No In the Equal Employment Opportunity Commission? X Yes __No If so, identify each case.

   Yes - I filed a sexual harassment suit with EEOC against Sammy Drake, a male white supervisor. Case No. EEOC 340-95-3911X, DON NO. 93-63126-011.

   You have only to look at the sequence of events after my filing the sexual harassment suit on 5 August 1993, to see how we got to where we are today. In October 1993, I was reorganized out of my position during downsizing, when I was number one in eligibility for approximately 15 other

positions in my department, but the only position I was offered was the one in the Intelligence Office, where I was required to obtain a top secret clearance.

2. Did the MSPB or the Arbitrator incorrectly decide or fail to take into account any facts? X Yes __No If so, what facts? (Refer to paragraph 7 of the Guide.)

It failed to take in consideration that I was denied the procedure under OPNAVINST. 5510.1h CH 1, PAGE 22a-1, DATED 24 August 1990. This instruction requires a "competent medical authority" and the agency acted to remove my security clearance without "competent medical authority." They ignored evidence to the contrary. I had two current medical evaluations from two certified and licensed psychologists, who had been referred to me by Civilian Employment Assistance Program (CEAP), THE MEDICAL REPORTS STATE THAT I AM PSYCHOLOGICALLY HEALTHY, CLEAR THINKING, AND NOT A RISK FOR A TOP SECRET CLEARANCE.

3. Did the MSPB or the Arbitrator apply the wrong law? ___Yes__No If so, what law should be applied?

I don't know, but there needs to be a check and balance system, whereby violators of civil laws, in executing government policies and rules can be held accountable for their actions, so that people like me will not fall victim to this kind of set-up.

4. Did the MSPB or the Arbitrator fail to consider important grounds for relief? X Yes ___No If so, what grounds?

_____

_____

5. Are there other reasons why the MSPB's or the Arbitrator's decision was wrong? ___Yes___No If so, what reasons?

_____

_____

6. What action (relief) do you want the court to take in this case?

That I be returned to full employment, I receive all back pay, annual and sick leave, all medical expenses, lawyer fees, and for pain and suffering.

7. Do you want to argue before the court in person? ____Yes__X__No What are the reasons argument will aid the court? (Refer to paragraph 15 of the Guide.)

_____

_____

8. Do you intend to represent yourself? __X__Yes __No If you have not filed a notice of appearance, indicate your full name, address, and telephone number.

_____

_____

9. I certify that a copy of this brief and any attachments was sent to Donald J. Cortichiato, the attorney for respondent, at the following address (found on the Notice of Appearance served on you by the attorney for the government. If you do not send a copy of this brief to the attorney for the other side, it cannot be accepted by the court):

15 April 1998 /S/ Rosama C. Ivery

Date Petitioner's signature

APPENDIX E

U.S. MERIT SYSTEMS PROTECTION BOARD

APPELLANT'S PETITION FOR REVIEW FORM

PLEASE COPY THE FOLLOWING FROM YOUR DECISION:

CASE NAME: Rosama C. Ivery v. Dept. of the Navy
(Appellant Name) (Agency)

Docket No: SF-0752-97-0429-I-1

Initial or Addendum Decision Finality Date: 29 August 1997
(See "Notice to Appellant" section of decision for "finality" date)

August 1, 1997
Rosama C. Ivery
Docket No. S-0752-97-0429-I-1

Appellant's Petition for Review

2. Were you denied any procedures to which you believe you were intitled? If so, what procedures and why do you believe you were entitled to them? Did you raise this matter to the judge? Please also describe how this harmed you.

I was denied the procedures under OPNAVINST. 5510.1H CH 1, Page 22A-1 dated 24 August 1990. (See Tab 4SS). This instruction requires "competent medical authority," and the agency acted to remove my security clearance without competent medical authority. They ignored evidence to the contrary that I am psychologically healthy and not a risk for a top secret clearance.

3. Do you have any documents or evidence that are important to your appeal that were not filed

with the judge? If so, you should attach these documents and evidence. Also, please explain why you did not submit these documents or evidence to the judge and why it is important for the Board to consider them.

My memo of 10 August 1995, is evidence of the work that I was doing and evidence of the fact that no matter what I did I could not please the Intelligence Office, because their main objective was to have me removed from the employment of the government.

The reason I did not submit this memo is: It was an oversight on my part.

4. Did the initial or addendum decision incorrectly decide any facts or fail to consider any facts? If so, describe the facts that were not considered and the incorrect findings.

I was placed on Administrative Leave and was told that I would return to another position the following week. I had no idea that I would never be going back to work, but the Intelligence Office did and the Agency did. I remained on Paid Administrative Leave for three months until I was suspended indefinitely 24 November 1995. My eligibility to access classified material was suspended on 23 August 1995, when I was placed on Administrative Leave, not in September 1995, as states in the Judge's Findings.
The reason I did not submit this memo is: I did not have a need for this memo until I read the Judge's Findings.

The judge also stated that Sammy Drake, the supervisor, whom I filed the sexual harassment suit against, was my former supervisor. He was a supervisor, but he was not my supervisor.

5. Did the initial or addendum decision apply the wrong law or apply the law incorrectly? If so, what law should be applied and how?

6. Did the initial or addendum decision fail to consider important reasons for relief? If so, what are those reasons?

It did not consider the fact that I did not need a top secret clearance for the position I held. I already had a Secret Clearance, which I had held for 12 years, and I was never going to use a top secret clearance in my position.

It did not consider that I had two current medical evaluations from two certified and licensed psychologists, who had been referred to me by CEAP. The medical reports state that I am psychologically healthy and not a risk for a top secret clearance.

7. Are there other reasons why the initial or addendum decision was wrong? If so, what reasons?

I don't know how this can be done, but there needs to be a check and balance system, whereby violators of civil laws, in executing government policies and rules, can be held accountable for their actions, so that people like me will not fall victims to this kind of set-up.

8. What action (relief or remedy) do you want the Merit Systems Protection Board to order in this case?

That I be returned to full employment, I receive all back pay, annual and sick leave, all medical expenses, lawyer fees, and pain and suffering.

August 1, 1997

/S/ Rosama C. Ivery
Signature of Appellant

Rosama C. Ivery
3235 Shepherd dr.
Camarillo, CA 93010
(805) 484-0181

/S/ Rosama C. Ivery
(Appendix E)

APPENDIX F

September 3, 1997
Rosama C. Ivery
Docket No. SF-0752-97-0429-I-1

The Clerk of The Board
Merit systems Protection Board
1120 Vermont Avenue N.W. Room 806
Washington, DC 20419

Enclosure (1) Request for Counseling and Resolution dated 4 Oct 95

Enclosure (2) Request for Medical Evaluation dated January 24, 1996

Dear Sir or Madam:

I am receipt of the Agency's Cross Petition for Review.

The Agency is in violation of it's own OPNAVINST.5510.1H-CH1 dated 24 August 1990, which states the disqualifying factors, i.e. behavior or condition of mental disorder falls within one or more of (5) categories (then the instruction listed the five categories and each had one of the following comments in them):

1. Diagnosis by competent medical authority--"
2. "--the opinion of competent medical authority--"
3. "A diagnosis by competent medical authority that--"
4. "Diagnosis by competent medical authority that--"
5. "--or otherwise failing to follow medical advise relating to treatment--"

Please see OPNAVINST.5510.1H-CH-1, Tab 4SS.

Also see my letter of 1 September 1995, to Captain Roger K. Hull, Vice Commander, NAWCWD under Tab 4JJ. These violations occurred on 23 August 1995, when my access to classified information was revoked and I was placed on paid administative leave; (See enclosure (1)), also on 24 November 1995, when I was suspended without pay for failure to maintain access to classified material, (See Tab 4Z). The agency then ignored their own OPNAVINST.5510.1H CH-1, when evidence was found by two certified and licensed psychologists, who to the contrary of the agency's purpose for removing me from my employment with the government, reported that I was found psychologically healthy and not a risk for top secret clearance.

Director, Department of The Navy Central Adjudication Facility (DONCAF) requested a current medical evaluation of me. I provided them with two medical reports from two certified and licensed psychologists, (See Tab 4S).

I have been deeply concerned about the agency presenting the facts and have been constantly checking for accuracy of materials and meeting deadlines, and DONCAF required me to send all my materials via Code 74100D, NAWCWPNS, Pt. Mugu, California, and I could not rely on them. I sent my medical reports directly to DONCAF for fear that it would not maintain its accuracy or meet the deadline, and I was right, for it did not. (See Tab 4K Para. 5). Enclosure (2) is also another example of why I felt I could not trust the agency to present my material accurately and on time in order to meet my deadlines. It was not presented in its entirety under Tab 4W to distort the facts.

I complied with DONCAF's request for current medical evaluation, nothing else was required.

My petition for review is indeed necessary, if we are to get to the truth in this case. And

I believe that if you were to ask the question, WHY? to the sequence of events that I listed in my letter to you on August 1, 1997, you will indeed get to the truth.

Again, I thank you for your consideration in my case, for all would be victims of this type of violation, and for those who have already been victims, but were not vindicated.

Sincerely yours,

/S/ Rosama C. Ivery

Rosama C. Ivery

/S/ Rosama C. Ivery
(Appendix F)

APPENDIX G

OPNAVINST 5510.1H CH-1

MENTAL OR EMOTIONAL DISORDERS

Basis: Any behavior or illness, including any mental condition, which, in the opinion of competent medical authority, may cause a defect in judgment or reliability with due regard to the transient or continuing effect of the illness and medical findings in such case.

Disqualifying Factors (behavior or condition falls within one or more of the following categories):

1. Diagnosis by competent medical authority (board certified psychiatrist or clinical psychologist) that the individual has an illness or mental condition which may result in a significant defect in judgment or reliability.

2. Conduct or personality traits that are bizarre or reflect abnormal behavior or instability even though there has been no history of mental illness or treatment, but which nevertheless, in the opinion of competent medical authority, may cause a defect in judgment or reliability.

3. A diagnosis by competent medical authority that the individual suffers from mental or intellectual incompetence or mental retardation to a degree significant enough to establish or suggest that the individual could not recognize, understand or comprehend the necessity of security regulations, or procedures, or that judgment or reliability are significantly impaired, or that the individual could be influenced or swayed to act contrary to the national security.

4. Diagnosis by competent medical authority that an illness or condition that had affected judgment or reliability may recur even though the individual currently manifests no symptoms, or symptoms currently are reduced or in remission.

5. Failure to take prescribed medication or participate in treatment (including follow-up treatment or aftercare), or otherwise failing to follow medical advise relating to treatment of the illness or mental condition.

Mitigating Factors (circumstances which may mitigate disqualifying information):

1. Diagnosis by competent medical authority that an individual's previous mental or emotional illness or condition that did cause significant defect in judgment or reliability is cured and has no probability of recurrence, or such a minimal probability of recurrence as to reasonably estimate there will be none.

2. The contributing factors or circumstances which caused the bizarre conduct or traits, abnormal behavior, of defect in judgment and reliability have been eliminated or rectified, there is a corresponding alleviation of the individual's condition and the contributing factors or circumstances are not expected to recur.

3. Evidence of the individual's continued reliable use of prescribed medication for a period of at least two years, without recurrence and testimony by competent medical authority that continued maintenance of prescribed medication is medically practical and likely to preclude recurrence of the illness or condition affecting judgment or reliability.

4. There has been no evidence of a psychotic

condition, a serious or disabling neurotic disorder, or a serious character or personality disorder for the past 10 years.

/S/ Rosama C. Ivery
(Appendix G)

APPENDIX H

JoEllen Stevens, Ph.D.
Psychologist
500 E. Esplanade Drive, 14th Floor
Oxnard, CA 93030
(805) 981-1208, Fax (805) 981-1210

February 22, 1996

Psychological Evaluation of
Rosama C. Ivery

This evaluation is based on the following data:

1. Clinical interview with Ms. Ivery;
2. Review of Mrs. Ivery's medical records pertaining to her psychiatric history.
3. Review of proposed suspension without pay dated 12 October, 1995.

Ms. Rosama Cecily Ivery presented as a 54 year old female who was appropriately dressed. Her affect was appropriate and she was cooperative, self disclosing and displayed trusting behavior.

Ms. Ivery was oriented in all spheres and did not appear anxious or depressed. She was candid about her experiences and her history.

Ms. Ivery indicated she had been placed on suspension and that she would like an independent evaluation to comment on her psychological well being.

In the course of the interview, Ms. Ivery indicated she had filed sexual harassment charges against Mr. Drake, a coworker, as a result of incidents which had occurred directly involving her and involving other women in her area over a period of time. She indicated that these behaviors of Mr. Drake had been occurring for some time but that she decided to come forward following a push by her

employer to encourage women who were subjected to abuse to speak up and get help.

Ms. Ivery indicated she had tried unsuccessfully to stop the advances of Mr. Drake, which included him pushing himself upon her in close and uncomfortable proximity and touching by Mr. Drake. Ms. Ivery further indicated that she attempted to place obstacles between herself and Mr. Drake to protect herself but that he would become very angry at her when she did this. She indicated other worker's in her office had confided in her with instances of harassment they had encountered perpetrated by Mr. Drake.

Ms. Ivery believes that as a result of coming forward and asking for help, she suffered harm. She was removed from her position and reassigned to another area. She had enjoyed her job and had mixed feelings when she was reassigned. She was relieved, however, to be out of the harassment situation.

Ms. Ivery appeared tired of the process she had been going through. She does not know what has become of Mr. Drake but believes he may have retired.

Ms. Ivery was reassigned to a top secret area but was never assigned top secret work. She was given the job of organizing the library of the area in which she worked.

Ms. Ivery states that she was very poorly informed about the division she was assigned to and that everyone worked by themselves due to the nature of their jobs. She further indicated that she spent little to no time with the other women in her new job because they were situated in a different area. She stated she was friendly when she saw these women in the morning and on breaks, but in reality spent little time with them because they were in the top secret area.

Ms. Ivery appeared as a rational, intact individual. She denied having any current psychological problems. She indicated she had had

marital problems in the past and had a period of confusion following separation from her husband ten years ago. At that time she sought psychiatric help, recovered and returned to her marriage. Ms. Ivery was very candid about her feelings at the time and the problems she experienced.

Ms. Ivery agreed to and completed testing by Leonard Diamond, Ph.D., who administered an MMPI to her on 2/15/96.

The results of this testing indicated that Ms. Ivery is not depressed and is "well balanced and tries to be comfortable with herself... She is generally open and level headed but she has a need to be liked and she is a conforming and moralistic person."

The MMPI also indicated that Ms. Ivery is not paranoid or anxious. She is flexible, rational and clear thinking.

Dr. Diamond concluded, "in summary, Mrs. Ivery's MMPI is moderately defensive and somewhat manipulative. However, she is seen as generally healthy and competent psychologically with no indications of long term personality deviation."

Dr. Diamond's evaluation concurs with my findings from clinical interview. Ms. Ivery appears to be healthy from a psychological perspective. She was not, however, defensive in her interview but was self disclosing and open. She did not have odd or strange thinking and was not paranoid. Mrs. Ivery showed no signs of psychotic thinking patterns or behavior.

The clinical interview in conjunction with psychological testing, are strong indications that Ms. Ivery is currently psychologically healthy and not suffering from depression, severe anxiety or psychotic behavior. She is not, in sum, suffering from any recurrences of the psychological state she was in in 1986 when she sought help from Dr. Benjamin D. Templeton.

Given her current psychological health and her apparent health since the period of confusion in

1986, it appears that she may have been misdiagnosed at that time. Her period of confusion was relatively short lived and is probably better classified as a Brief Reactive Psychosis, which was precipitated by her marital separation and which resolved some months later. Actual psychotic thinking apparently lasted less than two months, according to Dr. Templeton's records. There was apparently no repeat of this type of confusion or behavior.

It is my professional opinion that Ms. Ivery is not a risk for top secret classification, based on her psychiatric condition, given her current psychological health and her apparent good adjustment prior to and subsequent to brief reactive psychosis in 1986, and has not taken Narvane since 1988. She indicates her job history and reviews have been good throughout her history of employment. She made a good adjustment since 1986, and should not be penalized for seeking help when she needed it, recovering, and maintaining her psychological health.

JoEllen Stevens, Ph. D. Date

/S/ JoEllen Stevens February 22, 1996

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Fax 482-8687 February 15, 1996

MMPI REPORT - ROSAMA CECILY IVERY (54-1)

Ms. Ivery presents a valid but moderately defensive MMPI protocol. She does not lie and she appears as

comfortable with her self image. She does not endorse a large number of rare, unusual and disturbed items. Ms. Ivery does not like to acknowledge any distress. She tries to be adaptive and self-reliant. She is offering a picture of herself which is somewhat better than in reality.

The neurotic scales are low and in the non-pathological range. Ms. Ivery has mild concern about her body and physical health. She is generally emotionally open but she has the capacity to be a chronic complainer and she is somewhat immature. Ms. Ivery is not depressed but instead, she is reality oriented, well balanced and tries to be comfortable with herself. She demonstrates some mild hysteria. She is generally open and level-headed but she has a great need to be liked and she is a conforming and moralistic person.

Ms. Ivery shows poor tolerance of boredom or tedium. She may also have problems with authority and recurrent marital or work problems. She can be rebellious and hostile as well as underachieving. She tries to manipulate her environment and she has a good measure of success. Ms. Ivery is well identified as a female. She is adventurous, active, spontaneous and assertive. There are no suggestions of paranoia or excessive suspiciousness. In fact, she appears as rational and clear thinking as well as flexible and, at times, gullible. Ms. Ivery does not appear to be excessively anxious or agitated. She appears as punctual, reliable, trusting, adaptable and organized. Ms. Ivery is involved with others but she does not always have a great deal of interest in being closely connected to other people. She is creative and imaginative, high strung and she may have excessive religious concerns. She has an adequate emotional energy level. She is sociable and friendly most of the time. This is an inconsistency with regard to the previous scale

which indicated that she is not very friendly. Ms. Ivery also endorses items indicating that she is far more extraverted than intraverted. She tries to be warm and sociable.

Ms. Ivery tends to utilize repression as a major mechanism. She does not like to experience or face problem areas and she does not have her feelings very close to the surface. Her ego strength is good. There are no indications in this protocol of any tendencies toward addictive behaviors, drug or alcohol abuse.

In summary, Ms. Ivery's MMPI is moderately defensive and somewhat manipulative. However, she is seen as generally healthy and competent psychologically with no indications of long term personality deviations.

/S/ Leonard Diamond, Ph.D.

Leonard Diamond, Ph.D.

/S/ Rosama C. Ivery
(Appendix H)

MMPI-2 Minnesota Multiphasic Personality Inventory-2"

CONFIDENTIAL

Address _____

Occupation _____ Date Tested 2/17.

Education _____ Age _____ Marital Status _____

Referred By _____

MMPI-2 Code _____

Scorer's Initials _____

Profile for Basic Scales

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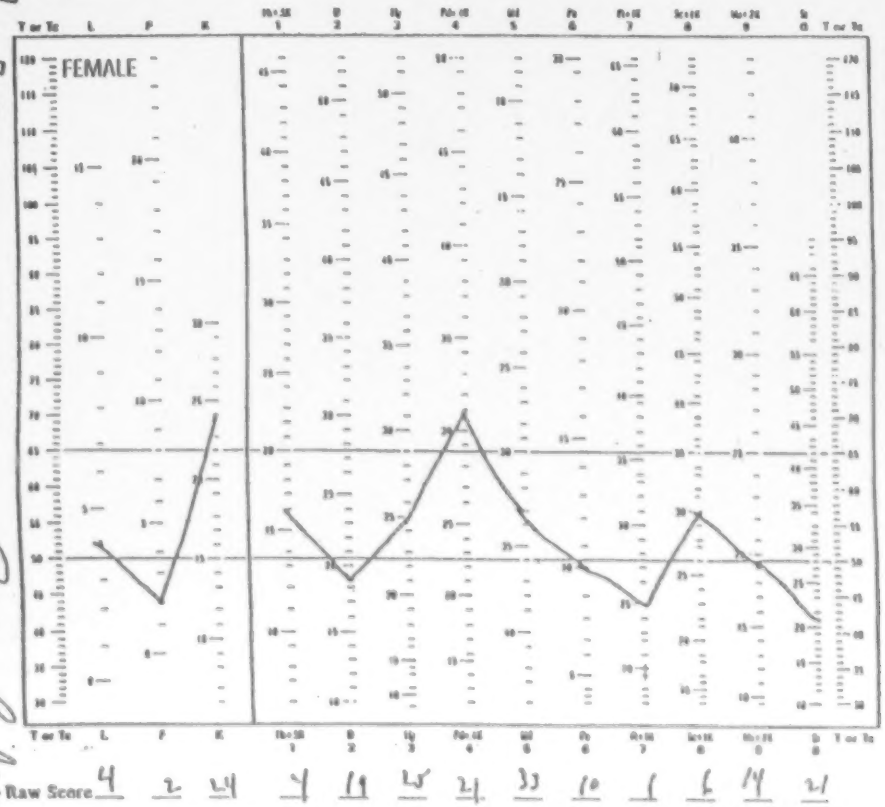
ROSAMA C. IVORY



LEGEND

L	Lie
F	Infrequency
K	Correction
Hs	Hypochondriasis
D	Depression
Hy	Conversion Hysteria
Pd	Psychopathic Deviate
Mf	Masculinity Femininity
Pa	Paranoia
Pt	Psychasthenia
Sc	Schizophrenia
Ma	Hypomania
Si	Social Introversion

R-22

63-40

MAC-18

Raw Score	L	F	K	Hs	D	Hy	Pd	Mf	Pa	Pt	Sc	Ma	Si
	4	2	14	4	19	15	21	33	10	1	6	14	21

Rosama C. Ivory

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